MASS. EA10.2: OC2

M A S S A C H U S E T T S

OCEAN SANCTUARIES ACT

QUESTIONS A FEW ANSWERED

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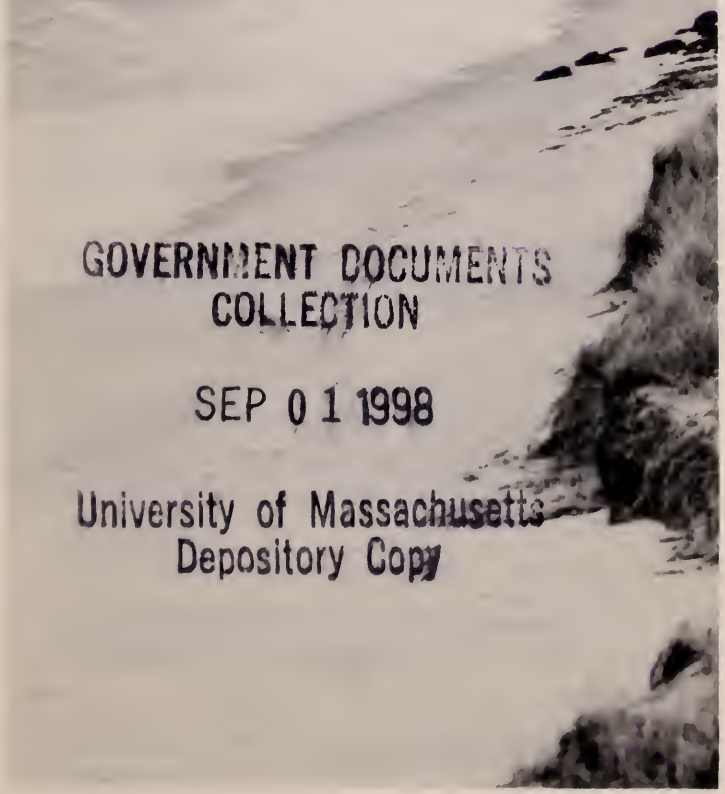

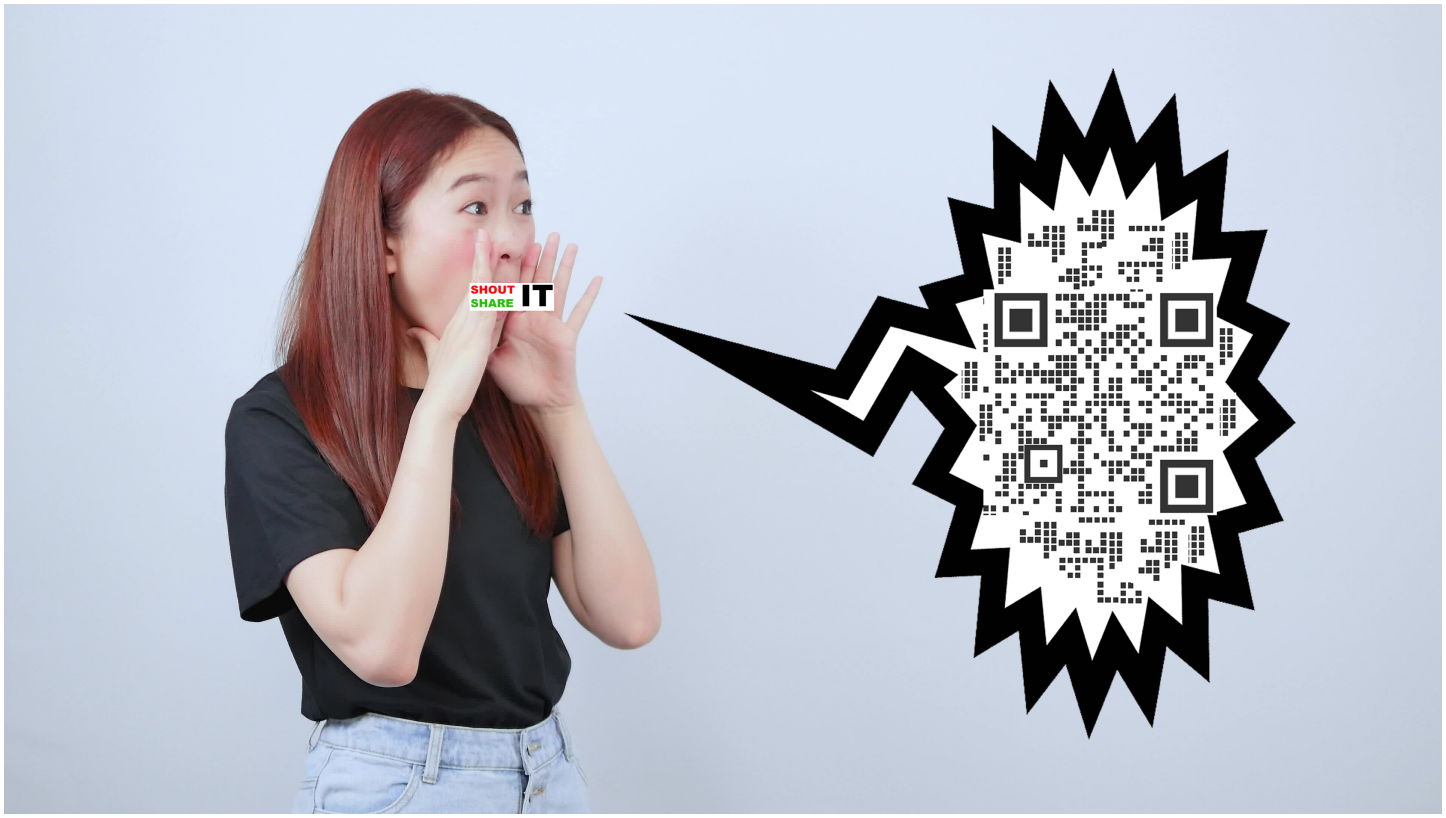
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The Ocean Sanctuaries Act joins the Wetlands Protection Act, the Wetlands Conservancy Program, the Public Waterfront Act (Chapter 91) and several marine fisheries and water quality laws as major state legislation designed to protect the fragile coastal zone of Massachusetts.

Originally established in 1970 and amended in 1989, the Ocean Sanctuaries Act strives to preserve our coastal resources – marine life, water quality, and beaches – that are so critical to the continued health of the Commonwealth's major industries of fishing, shellfishing, recreation, and tourism.

New regulations for the Act, which is administered by the Massachusetts Department of Environmental Management, were issued in 1991.

What is the Ocean Sanctuaries Act?

The Ocean Sanctuaries Act (OSA) [Massachusetts General Laws, Chapter 132A, Sections 13-16 and 18] and regulations [302 CMR 5.00] designate five ocean sanctuaries to "be protected from any exploitation, development or activity that would seriously alter or otherwise endanger the ecology or the appearance of the ocean, the seabed or subsoil thereof, or the Cape Cod National Seashore." The Act is unique in its charge to protect the "ecology" and "aesthetic" interests as well as water quality.

When was the Act passed?

The Massachusetts Legislature passed the original form of the Act in 1970, based upon recommendations of a special commission. Regulations were promulgated in 1978. In 1984, the Legislature established a Study Group chaired by the Massachusetts Coastal Zone Management Office, which made recommendations for changes to the original Act. The amended Act was passed in 1989, and new regulations were promulgated in 1991.

Where are the five ocean sanctuaries and when were they established?

Most of the Massachusetts coastline, below mean low water, is designated as an ocean sanctuary except for the portion of Massachusetts Bay between Lynn and Marshfield. The five sanctuaries are:

Sanctuary:	Established by:
Cape Cod	Ch. 542 of 1970
Cape Cod Bay	Ch. 742 of 1971
Cape and Is.	Ch. 742 of 1971
North Shore	Ch. 130 of 1972
South Essex	Ch. 369 of 1976

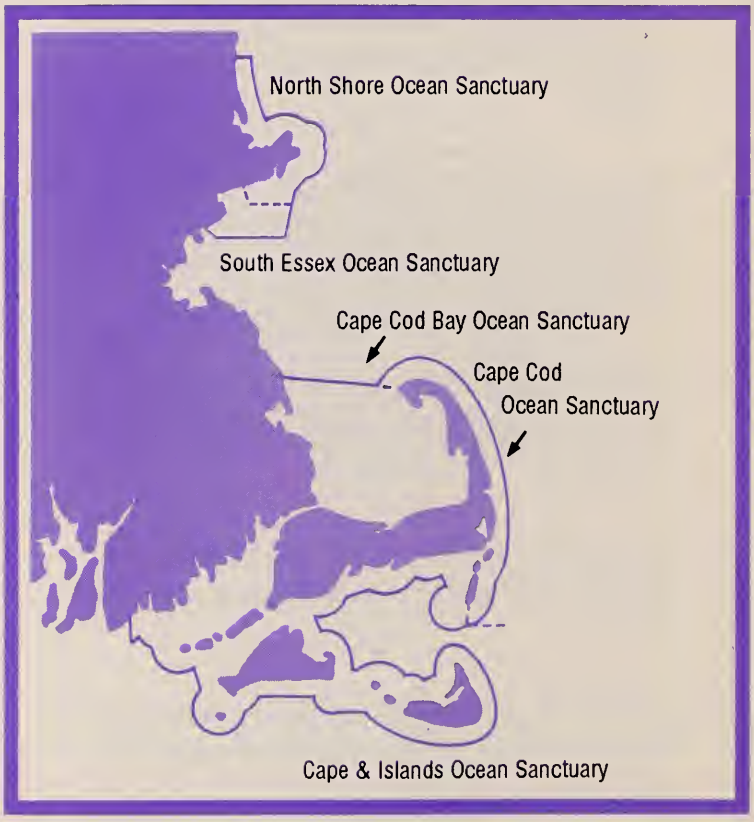
Who administers the Act?

The sanctuaries have been placed under the "care and control" of the Massachusetts Department of

Environmental Management. Acting as a caretaker rather than a permitting authority, the Department oversees all other state agencies' licensing, permitting and approval activities in ocean sanctuaries to ensure compliance with the Act. It is the responsibility of all state agencies to conduct their activities consistent with the provisions of the Act and confer with the Ocean Sanctuaries Coordinator.

Ocean Sanctuaries of Massachusetts

as defined by M.G.L.C. 132A ss. 13-16 and 18



How does the Act work?

The Ocean Sanctuaries Act is designed to protect coastal waters by prohibiting activities that could be environmentally or aesthetically damaging. Activities that have been prohibited include:

- **building of any structure on the seabed or in its subsoil**
- **drilling or removal of any sand, gravel or other minerals, gases or oil**

- dumping or discharge of commercial or industrial wastes
- incineration of solid waste material or refuse on or in vessels moored or afloat within an ocean sanctuary
- offshore or floating electric generating stations
- commercial advertising

In addition to protecting the marine environment, the regulations prohibit:

- removing any soil, sand, gravel, or other minerals in any significant amounts
- changing drainage or flushing characteristics, salinity distribution, sedimentation or flow patterns, flood storage areas, or the water table to more than a negligible extent
- dumping, discharging or filling with any material of any kind that could significantly degrade water quality
- driving pilings or erecting buildings or other structures of any kind of any significant size or quantity, whether or not they interfere with the flow of water
- destroying or adversely affecting in more than a negligible way any plant or animal life, including shellfish and fisheries
- changing the temperature, biochemical oxygen demand, or other natural characteristics of the water so that there is more than a negligible adverse effect
- significantly increasing the development of already developed areas
- developing any previously undeveloped or natural areas

What is allowed under the Act?

Numerous activities are allowed under the Act, including:

- **harvesting of fin and shellfish**
- **extraction of sand and gravel for shore protection or beach nourishment**
- **continued operation of municipal, commercial or industrial facilities and discharges in existence at the time of the passage of the original Act, where such activities have been approved and licensed by appropriate federal and state agencies**
- **projects approved under the Waterways Act (Chapter 91) administered by the Department of Environmental Protection (DEP) when judged to be of public necessity and convenience and when approved by applicable regulatory agencies**
- **electric generating stations that have been licensed by all applicable agencies (floating or offshore is prohibited)**

What is new in the 1989 amendment to the Act?

The amended Act and regulations establish a variance procedure for proposed increases in municipal wastewater discharges into a Sanctuary. Prior to the amendment, a community with an existing right to discharge municipal wastewater into a Sanctuary could not correct water pollution problems if it meant increasing the volume of discharge or moving the point of discharge. Effluent volumes had to stay at the original volume, even if the discharge was cleaner because of a higher level of treatment. A community could not increase its discharge volume to address increased development or sewer use or to eliminate problems from combined sewer overflows.

If building in a Sanctuary is prohibited, why are new docks and piers being constructed?

Structures are allowed if they are approved under the DEP Waterways Chapter 91 process and meet an additional provision called the "public necessity and convenience" standard, which is defined as "necessary to the public interest" and consists of the following factors:

- **whether the proposed facility or use will serve the public interest**
- **whether either the public demonstrates a need for the project or appropriate officials deem the project necessary for the public's safety or welfare**
- **whether the proposed facility or use will seriously alter or otherwise endanger the ecology or appearance of the ocean, the seabed or subsoil thereof**
- **whether the facility or use, if any existing at the time the agency approval is requested, is inadequate**
- **whether and to what extent existing uses or facilities will be affected by the proposed facility or use**
- **whether the person proposing the project has the financial and/or technical ability to build and maintain the project properly**

Where can I obtain more information?

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